PIANG HONG YON & ORS.

v.

SYKT. SERI BERLIAN SDN. BHD.

FEDERAL COURT, JOHOR BAHRU
LEE HUN HOE CJ (BORNEO)
WAN SULEIMAN FJ
MOHD. YUSOF MOHAMED J
[CIVIL APPEAL NOS. 71/80; 140-144/80]
6 NOVEMBER 1982

CIVIL PROCEDURE: *Appeal - Application for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong - Stay of execution pending appeal - Enlargement of time - Reasons for delay.*

This was an application for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the order of the Federal Court dated 5 December 1981, and for a further order of stay of execution of the judgments pending appeal. Counsel for the applicants Mr. Thara Singh Sidhu referred to the affidavit of one Abdul Aziz b. Daud, a director of the applicant company and said that it was only 6 days outside the time limit of 6 weeks prescribed by s. 75 of the Courts of Judicature Act, the application having been filed on 23 January 1982 which was caused, by difficulty in getting a director to swear affidavit. Counsel added that the respondents would not be prejudiced in any way, and that it was an appropriate occasion for the Court to exercise its discretion and allow enlargement of time under r. 154 of the Federal Court Rules.

Counsel for respondent 7 Mr. Edgar Joseph (whose arguments Counsel Mr. Humphrey Ball for the other 6 respondents adopted and supported) however said that the delay was not 6 days but 34 days as the 1st application dated 22 January 1982 (1 week late) merely moved the Court for conditional leave to appeal and did not contain prayer for extension of time, and it was only in the 2nd application dated 19 February 1982, being 34 days after the judgment of this Court that such a prayer was first made. Mr. Joseph also questioned the authority of Mr. Sidhu as it would appear from Mr. Sidhu's affidavit that he was acting at the request of only one of several directors of the company and that a resolution of the company was necessary if he was to be regarded as having authority to act for it. To this, Mr. Sidhu replied that he had from the very start acted as solicitor for the applicants.

Held - dismissing the application:

[1] The Federal Court was satisfied that, as the records show, Mr. Sidhu had, as he had claimed, been solicitor for the applicants from the very start.

[2] There was a delay, not of 6 days as Mr. Sidhu claimed, but of 34 days. Not being able to find the directors of the company, the reason given for the delay was to say the least a most inadequate one, something which did not behove the Federal Court to grant an extension of time.

[Application dismissed with costs.]

Cases referred to:

Re L.Y. Swee & Co. Ltd. Khoo Leong Kee v. L.Y. Swee & Co. Ltd. [1968] 2 MLJ 104
Ratnam v. Cumarasamy & Anor. [1965] 1 MLJ 228

Legislation referred to:

Courts of Judicature Act 1964, s. 75
Rules of the Federal Court 1980, r. 154

For the applicants - Thara Singh Sidhu; M/s. Thara Singh Sidhu & Co.
For the 1st 6 respondents - Humphrey Ball; M/s. Sault & Co.
For the respondent 7 - Edgar Joseph; M/s. Sault & Co.

JUDGMENT

This is an application for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong against the order of this Court dated 5 December 1981, and for a further order that execution of the judgments appealed from be stayed pending appeal.

Mr. Thara Singh Sidhu for the applicants referring to the affidavit of Abdul Aziz b. Daud, a director of the applicant company says that he is only 6 days outside the time limit of 6 weeks prescribed by s. 75 of the Courts of Judicature Act, the application having been filed on 23 January 1982. Counsel added that the respondents would not be prejudiced in any way, and that this is an appropriate occasion for the Court to exercise its discretion and allow enlargement of time under r. 154 of the Federal Court Rules. The delay was caused, he said by difficulty in getting a director to swear an affidavit. Special circumstances need not, he submits, be shown in an application such as this.

Mr. Edgar Joseph for respondent 7 (whose arguments Mr. Humphrey Ball acting for the other 6 respondents adopts and supports) however says that the delay is not 6 days but 34 days. Whilst the 1st application was dated 22 January 1982 (one week late) merely moved the Court for conditional leave to appeal and contained no prayer for extension of time, it was only in the second application dated 19 February 1982, 34 days after the judgment of this Court, that such a prayer was first made.

Mr. Joseph also pointed out that it would appear from Mr. Sidhu's affidavit that he was acting at the request of only one of several directors of the company and adds that a resolution of the company would be necessary if Mr. Sidhu is to be regarded as having authority to act for it. To this Mr. Sidhu's reply is that he had from the very start acted as solicitor for the applicants.

Mr. Joseph refers to a passage in *Re L.Y. Swee & Co. Ltd.: Khoo Leong Kee v. L.Y. Swee & Co. Ltd.* [1968] 2 MLJ 104 in support of his proposition that authority to act on its behalf requires the resolution of the company.

The facts there are different. We are satisfied that, as the records show, Mr. Sidhu had, as he claimed, been solicitor for the applicants from the very start.

We were also referred to a passage in *Ratnam v. Cumarasamy & Anor* [1965] 1 MLJ 228, a decision of the Privy Council which lays guidelines for the exercise of our discretion - "The Rules of Court must *prima facie* be obeyed, and in order to justify a Court in extending the time during which some step in procedure requires to be taken there must be some material upon which the Court can exercise its discretion. If the law were otherwise, a party in breach would have an unqualified right to an extension of time which would defeat the purpose of the rules which is to provide a time table for the conduct of litigation."

There was a delay, not of 6 days as Mr. Sidhu claims, but of 34 days. Not being able to find the directors of the company, the reason given for the delay, is to say the least, a most inadequate one, something which in our considered view does not behove us to grant an extension of time.

The application is therefore dismissed with costs.

Also found at [1983] 1 CLJ 72